

HONORABLE TIMOTHY W. DORE
HEARING DATE: FRIDAY, JUNE 13, 2014
HEARING TIME: 2:00 P.M.
LOCATION: SEATTLE, COURTROOM 8106

**SUBJECT TO ENTRY OF ORDER SHORTENING TIME FOR
HEARING**

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

SOLAVEI, LLC,

Debtor.

No. 14-14505

DECLARATION OF RICHARD A.
WHITE IN SUPPORT OF SOLAVEI'S
EMERGENCY MOTION FOR ORDER (1)
AUTHORIZING USE OF CASH
COLLATERAL AND GRANTING
ADEQUATE PROTECTION THEREFOR
PURSUANT TO SECTIONS 361 AND 363
OF THE BANKRUPTCY CODE, AND (2)
SETTING A FINAL HEARING

Richard A. White declares the following:

1. I am General Counsel and Secretary of Solavei, LLC, debtor-in-possession herein. I have personal knowledge of the facts set forth herein. I make this Declaration in support of Solavei's Emergency Motion for Order: (1) Authorizing Use of Cash Collateral and Granting Adequate Protection Therefor Pursuant to Sections 361 and 363 of the Bankruptcy Code, and (2) Setting a Final Hearing ("Motion"). Capitalized terms not defined herein have their meanings as set forth in the Motion.

DECLARATION OF RICHARD A. WHITE IN SUPPORT OF
SOLAVEI'S CASH COLLATERAL MOTION

– Page 1

BUSH STROUT & KORNFIELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

2. Founded in late 2011, Solavei sells goods and services to consumers using an innovative online model the company refers to as “Social Commerce.” Instead of using traditional advertising and a traditional sales force, Solavei relies on individual consumers, communicating with each other and other potential customers using social networks such as Facebook and Twitter, to sell its products online. Solavei’s approach allows consumers to receive goods and services they use every day at a discounted price, and also rewards consumers with the opportunity to earn income by referring Solavei’s products to others. Because of its Social Commerce model and innovative technology, Solavei was recently named a winner of the 2014 Red Herring Top 100 Award, a prestigious award honoring the year’s most promising and innovative private technology companies. See <https://sg.finance.yahoo.com/news/solavei-named-winner-2014-red-231100902.html>.

3. As discussed below, Solavei’s first product is national mobile phone service, with plans to expand its product lines to such areas as residential electricity, cable television service and other areas.

4. Solavei is headquartered in Bellevue, Washington, has 51 full-time employees and contracts for an additional 160 dedicated call center representatives and offshore development resources that provide member support and technology services respectively.

5. Solavei has created a technology platform to facilitate its Social Commerce model. All Solavei customers, referred to by the company as Solavei “members,” have access to this technology platform, which includes proprietary tools allowing members to communicate with each other, purchase and sell Solavei products, keep track of potential referral prospects, and manage their referral commissions.

6. Solavei launched its first product, nationwide mobile phone service, approximately 18 months ago, in September 2012. Since that time, Solavei has signed up over 250,000 members and

1 operates at a current annual revenue rate of approximately \$65 million. Solavei buys its mobile phone
2 service on a wholesale basis from T-Mobile USA, Inc. and then sells it to its customers starting at \$29
3 per month for unlimited voice and text service, and at \$39 for unlimited voice, text and data service.
4 As of May 31, 2014, Solavei had approximately 101,500 active mobile customers.

5 7. Solavei also rewards its members by paying them each month for every mobile
6 subscriber they personally refer to Solavei and for building significant networks of mobile
7 subscribers. Solavei pays a \$5 referral commission each month for every subscriber a member
8 personally refers to Solavei, and this monthly commission continues for as long as the referred
9 subscriber remains a Solavei customer.

10 8. Members that have built large networks of customers also receive monthly commission
11 payments ranging from \$100 and more based on the size of the network. Network size is based on the
12 number of active mobile subscribers.

13 9. Members receive their commissions as a discount to their mobile service bill, and
14 earnings beyond the cost of their monthly bill are deposited onto a Solavei branded Visa debit card or
15 transmitted directly to their checking account. These commissions are paid to members on the 12th of
16 each month.

17 10. As of May 31, 2014, Solavei had approximately 101,500 active mobile customer
18 members. Approximately 35,000 members have built networks that qualify for commissions. Many
19 of Solavei's customer/members are families with less than \$75,000 in annual income, meaning that
20 the cost of essential cell/data service and the ability to receive income through the Solavei referral
21 system are meaningful issues for these customer/members.

22 11. In October, 2013, Solavei expanded customer services to include "Marketplace," a site
23 where members can use their Solavei branded debit card to make purchases from major merchants and

1 received pre-negotiated discounts and cash-back rewards to their card. Marketplace discounts include
2 offers for restaurants, coffee shops, clothing, and other retail purchases.

3 12. Solavei intends to introduce residential gas and electric service as its next consumer
4 product and has been negotiating an entry to the energy sector with a person-to-person energy
5 distribution company.

6 13. In spite of its rapid growth and ability to generate substantial revenues, Solavei has
7 encountered some financial challenges. Solavei initially scaled its business infrastructure to support a
8 larger network of members than was actually needed. In addition, vendor costs, in particular the cost
9 of wholesale mobile services purchased from T-Mobile, exceeded expectations due to higher than
10 anticipated customer usage.

11 14. The company was able to restructure many costs and vendor obligations, and in the
12 summer of 2013, it reached agreement with its major service providers, including T-Mobile, on cost
13 revisions that were better aligned with projected revenues.

14 15. It has also taken time and experimentation to properly structure the member
15 commission model. The amount of commission payments owed to Solavei members for referrals and
16 network building activities exceeded initial expectations and has required fine tuning as the business
17 has grown. Solavei had initially agreed to pay 50 percent of its gross profit to members in the form of
18 commissions. However, as members found ways to maximize their commissions in ways not
19 anticipated under the commission plan, the company was actually paying some 83 percent of its gross
20 profits to members.

21 16. Solavei substantially revised the commission plan in March 2013 and again in January
22 2014, to bring its overall payout closer to the sustainable 50 percent level.
23

1 17. The combination of these issues have stressed the company's working capital and
2 liquidity as it works to recover from initial vendor costs and member commission structures that
3 proved unsustainably high. As a result of this stress on working capital and liquidity, the company
4 finds it necessary to restructure its existing liabilities as it continues to grow its business. In order to
5 effectuate that restructure, the company filed this case to utilize the breathing room and restructuring
6 opportunities available in Chapter 11.

7 18. In order to capitalize its initial efforts, Solavei successfully raised approximately \$25
8 million in equity and short-term bridge financing from investors. Based on the fairly rapid traction
9 Solavei has found in the marketplace, its ability to build revenues, and the potential entry into new
10 product lines, such as energy, Solavei believes that it will be able to raise additional capital to support
11 its efforts to continue building its business.

12 19. The following is a summary of Solavei's secured debt.

13 **Opus Bank**

14 20. Under loan documents including a July 1, 2013 Credit Agreement, Note, and Security
15 Agreement, Solavei is indebted to Opus Bank in the principal amount of \$5 million. In addition to the
16 existing \$5 million outstanding balance, Opus had previously advanced in restricted funds \$10
17 million. This \$10 million was cash held by Solavei in an Opus account, the use of which Opus had
18 restricted and tied to future equity raises by the company, such that the \$10 million in cash was not
19 actually available for use by Solavei. Solavei did not ever complete the equity raise necessary to
20 make the restricted funds available and has not been in a position to do so. Therefore, Solavei
21 recently worked with Opus to have this \$10 million returned to Opus, which was accomplished on
22 June 6, 2014. Pursuant to the Loan Documents, Solavei granted the Bank a first-position security
23 interest in all of its personal property to secure the Bank loan. A UCC-1 financing statement

1 evidencing the Bank's secured position was filed with the state of Delaware on July 11, 2013 (File
2 No. 2013 2658962).

3 21. The Opus Bank Security Agreement provides that the lien granted is subject to the lien
4 of T-Mobile USA, Inc. pursuant to an August 24, 2012 Device Purchase Agreement and prior UCC-1
5 financing statement filed by T-Mobile (September 5, 2012, File No. 2012 3429349). However, as
6 discussed next, the debt associated with the August 24, 2012 Device Purchase Agreement has been
7 satisfied.

8 22. Copies of Opus loan documents are attached hereto as follows: Exhibit A: July 1,
9 2013 Credit Agreement; Exhibit B: September 10, 2013 First Amendment to Credit Agreement;
10 Exhibit C February 7, 2014 Second Amendment to Credit Agreement; Exhibit D July 10, 2013 Note
11 (\$5,000,000); Exhibit E July 10, 2013 Note (\$10,000,000); Exhibit F July 1, 2013 General Security
12 Agreement; Exhibit G UCC1.

13 **T-Mobile – Concluded Transaction**

14 23. Solavei and T-Mobile USA, Inc. ("T-Mobile") were previously parties to a Device
15 Purchase Agreement dated August 24, 2012 ("T-Mobile Concluded Agreement"). In connection with
16 Solavei's obligations under the T-Mobile Concluded Agreement, T-Mobile filed a UCC-1 financing
17 statement in Delaware (September 5, 2012, File No. 2012 3429349). Solavei's obligations under the
18 T-Mobile Concluded Agreement were satisfied and the September 5, 2012 UCC-1 does not relate to
19 any current obligations of Solavei to T-Mobile.

20 **T-Mobile - Existing Transaction – May 9, 2012 Wholesale Supply Agreement**

21 24. Solavei and T-Mobile are currently parties to a May 9, 2012 Wholesale Supply
22 Agreement as amended ("T-Mobile Supply Agreement") under which Solavei purchases and
23 distributes wireless communications service to end user customers through the use of T-Mobile's

DECLARATION OF RICHARD A. WHITE IN SUPPORT OF
SOLAVEI'S CASH COLLATERAL MOTION
– Page 6

BUSH STROUT & KORNFIELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

1 wireless system within the “Territory” as defined by the T-Mobile Supply Agreement. In connection
2 with the T-Mobile Supply Agreement, Solavei executed an October 1, 2013 Security Agreement (“T-
3 Mobile Security Agreement”), and T-Mobile filed a UCC1 financing statement on October 4, 2013
4 (DE file no. 2013 3905248).

5 25. Under the T-Mobile Security Agreement, Solavei granted T-Mobile a lien in Solavei’s
6 mobile service customer accounts, all contract rights relating to Debtor’s mobile service customer
7 agreements, all Receivables (rights to payment from Debtor’s mobile service customers), all data,
8 mobile service customer lists and books and records and proceeds relating to the foregoing.

9 26. As of the Petition Date, Solavei was indebted to T-Mobile under the Wholesale Supply
10 Agreement as amended in the approximate amount of \$16 million.

11 27. Copies of the T-Mobile Supply Agreement documents are attached hereto as follows:
12 Exhibit H May 9, 2012 Wholesale Supply Agreement; Exhibit I November 2, 2012 First Amendment
13 to Wholesale Supply Agreement; Exhibit J January 15, 2013 Supplement to First Amendment to
14 Wholesale Supply Agreement; Exhibit K August 26, 2013 Second Amendment to Wholesale Supply
15 Agreement; Exhibit L October 1, 2013 Security Agreement; Exhibit M UCC.

16 **Noteholders**

17 28. Prepetition, Solavei procured financing in tranches identified by Solavei as “Bridge”
18 and “Tranche B”:

	Principal	Approximate Balance with interest and Fees
Bridge	10,973,984.00	11,476,408.19
Tranche B	2,850,000	3,294,140
		14,770,548.19

19
20
21
22
23

DECLARATION OF RICHARD A. WHITE IN SUPPORT OF
SOLAVEI’S CASH COLLATERAL MOTION
– Page 7

BUSH STROUT & KORNFELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

29. Solavei executed promissory notes in favor of numerous parties relating to the Bridge and Tranche B financing ("Noteholders").

30. Solavei executed Security Agreements in favor of the Noteholders to secure the Notes. True copies of the security agreements executed with respect to the Tranche B and Bridge Noteholders are attached hereto as Exhibits P and Q.

31. Attached hereto as Exhibit R is a true copy of the Intercreditor Agreement entered into between T-Mobile, Solavei and the Noteholders.

32. The Noteholders filed UCC1s, September 24, 2013 (DE file no. 2013 3723526) and October 11, 2013 (DE file no. 2013 4010352), copies of which are attached hereto as Exhibits N and Q.

33. Below is a summary of the Noteholders information:

Noteholder	Note Date(s)	Claim Amt w/ Int & Fees	Bridge Principal	Tranche B Principal	UCC - 1 9/24/13	UCC-1 10/24/13
Allin1, LLC	04/8/13 \$3,200,000 ¹	3,504,843.84	3,200,000	200,000	√	
Ashley Elizabeth Adams Living Trust	01/03/13	26,246.58	25,000		√	
Bellwether Charitable Fund	03/22/13	315,123.29	300,000		√	
Brian Turner	12/26/12 [\$44,450.00] 4/26/13 [\$150,000]	337,750.68	44,450	150,000	√	√
Christopher J. Hurley	01/18/13	56,566.65	56,911.29		√	
Cottonwood Investments	01/03/13	183,726.03	175,000		√	
Cottonwood Partnership	01/03/13	183,726.03	175,000		√	
Dale Dir	03/04/13 [\$250,000] 08/23/13 [\$200,000]	495,030.14	250,000	200,000		√
David Limp	12/26/12 [\$50,000] 01/06/13 [\$50,000] 08/05/13 [\$150,000]	280,249.32	50,000 50,000	150,000	√	√
David T. Burnett	01/03/13	52,520.55	50,000			
Foundation for Healthy	03/19/13	26,260.27	25,000		√	

¹ Includes Assumption of 12/26/12 Notes of Solar V Investments, LLC (\$2,750,000; \$450,000).

DECLARATION OF RICHARD A. WHITE IN SUPPORT OF
SOLAVEI'S CASH COLLATERAL MOTION
- Page 8

BUSH STROUT & KORNFELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

	Noteholder	Note Date(s)	Claim Amt w/ Int & Fees	Bridge Principal	Tranche B Principal	UCC - 1 9/24/13	UCC-1 10/24/13
	Relationships						
	Foxx Family Parnership, Ltd.	12/28/12 ²	105,041.10	100,000		√	
	George Nolley Enterline Trust	01/03/13	10,498.63	10,000		√	
	Gracie Jane Adams Trust	01/03/13	10,498.63	10,000		√	
	Graymar Investors Partnership	12/26/12	105,041.10	100,000		√	
	Hopedene Ventures, LLP	01/11/13	107,479.45	100,000		√	
	Jamey Lea Adams Living Trust	01/03/13	26,246.58	25,000		√	
	Jim Spangler	03/11/13	15,756.16	15,000		√	
	John Locher	12/26/12	26,260.27	25,000		√	
	Jonathan Miller	12/26/12	29,218.23	27,816		√	
	Joseph Delozier	12/26/12	52,520.55	50,000		√	
	Josh Gooden	03/11/13 [\$100,000]	2,172,394.52	100,000	600,000	√	√
		03/11/13 [\$1,300,000]		1,300,000			
		07/31/13 [\$600,000]					
	Julie Catherine Adams Living Trust	01/03/13	41,994.52	40,000		√	
	Kimberly Clark Adams Living Trust	01/03/13	26,246.58	25,000		√	
	Maritch Energy Services	12/28/12 ³	52,520.55	50,000		√	
	Melissa Nolley Adams Living Trust	01/03/13	15,747.95	15,000		√	
	Noel C. Howe	01/18/13	56,566.65	56,911.29			
	Oliver Carmichael	01/03/13	105,041.10	100,000			
	OTR, Inc	12/28/12 ⁴	157,561.64	150,000		√	
	Parker Ferguson	12/26/12	52,520.55	50,000		√	
	Patrick and Heather Yeghnazar	03/22/13	210,082.19	200,000		√	
	Permalon Limited	01/04/13	314,958.90	300,000		√	
	Pickford Investment	12/26/12	78,780.82	75,000		√	
	Randal Imhoff Trust (formerly	12/26/12	78,780.82	75,000		√	
	² Assignment of \$100,000 of 12/26/12 Note from Bellevue Partners.						
	³ Assignment of \$50,000 of 12/26/12 Note from Bellevue Partners.						
	⁴ Assignment of \$150,000 of 12/26/12 Note from Bellevue Partners.						

DECLARATION OF RICHARD A. WHITE IN SUPPORT OF
SOLAVEI'S CASH COLLATERAL MOTION
– Page 9

BUSH STROUT & KORNFELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104

1	2	3	4	5	6	7	8	9	10	11	12
Noteholder	Note Date(s)	Claim Amt w/ Int & Fees	Bridge Principal	Tranche B Principal	UCC - 1 9/24/13	UCC-1 10/24/13					
Helpishere)											
Ron Lewis	03/11/13	26,260.27	25,000		√						
Rosalie Holcomb	01/18/13 [\$200,000]	325,835.62	200,000	100,000	√	√					
	09/06/13 [\$100,000]										
Sohail Quadri	12/26/12	210,082.19	200,000		√						
Solar V Investments, LLC	10/11/13	859,520.55		750,000		√					
Stream Investment Holdings, LLC	10/11/13 [\$450,000]	1,955,712.33	450,000	450,000	√						
	12/26/12 [\$450,000]		900,000								
	12/26/12 [\$900,000]										
Tarrango	01/03/13	944,876.71	900,000		√						
Teresa Dir	09/10/13	115,621.92		100,000							
The Glen Leven Limited Partnership	01/03/13	366,843.42	349,238		√						
Tom Mulholland	09/13/13	115,523.29		100,000		√					
Van Katzman	01/18/13	56,566.65	56,911.29		√						
William Gray Stream	12/26/12 [\$100,000]	217,301.37	100,000	50,000	√	√					
	12/26/12 [\$50,000]		50,000								
	10/11/13 [\$50,000]										
William Burnett	01/03/13	262,602.74	250,000		√						

34. Solavei does not request, at this time, that the Court make any findings with respect to the amount of Debtor's obligations to the various, nor the validity, priority or extent of their prepetition liens.

35. I declare under penalty of perjury under the laws of the state of Washington that the foregoing information is true and correct.

Dated this 11th day of June, 2014.

/s/ Richard A. White
Richard A. White

DECLARATION OF RICHARD A. WHITE IN SUPPORT OF
SOLAVEI'S CASH COLLATERAL MOTION
– Page 10

BUSH STROUT & KORNFIELD LLP
LAW OFFICES
601 Union St., Suite 5000
Seattle, Washington 98101-2373
Telephone (206) 292-2110
Facsimile (206) 292-2104